

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

ESTATE OF JAMES FRANKLIN PERRY)	
by NATHANIAL CADE, JR.,)	
Special Administrator, and)	
JFP, Jr.,)	
)	
Plaintiffs,)	Case No. 12-CV-664
)	
vs.)	
)	
CHERYL WENZEL, et al.,)	October 4, 2018
)	11:00 a.m.
Defendants.)	

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE J. P. STADTMUELLER

UNITED STATES DISTRICT JUDGE

Official Court Reporter:
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1 THE CLERK: The Court calls *Estate of James*
2 *Franklin Perry, et al., vs. Cheryl Wenzel, et al.*, Case
3 Number 12-CV-664, for a status conference.

4 May I have appearances beginning with the
5 plaintiff, please?

6 MR. GENDE: Good morning, Your Honor. James Gende
7 and Chris Katers for the plaintiffs. Mr. Katers appearing
8 as special administrator for the estate.

9 MS. LAPPEN: Good morning, Your Honor. Assistant
10 City Attorney Susan Lappen appears on behalf of the City of
11 Milwaukee, defendant.

12 MR. POSNANSKI: Good morning, Your Honor.
13 Attorney Tim Posnanski, Charles Bohl, and Vicki Arrowood
14 appear on behalf of Defendants Nicole Virgo and Cheryl
15 Wenzel.

16 THE COURT: Thank you.

17 Good morning to each of you. I appreciate, at the
18 outset, your collective efforts when the matter was referred
19 to Judge Callahan to hopefully either narrow the number of
20 witnesses or potentially the issues for trial. And while
21 generically some progress was made in those regards, I'm not
22 aware of all of the details. But I think at the outset,
23 what we need to do this morning is schedule the case for
24 trial and, in the interim, address some of the meddlesome
25 issues that remain.

1 As you are all aware, we had expected to have a
2 new judge this year, and that is not going to happen. And I
3 dare say, given the state of affairs in Washington, I
4 wouldn't be at all surprised that we wouldn't have a new
5 judge at this time next year. It's very unfortunate.

6 And as some of you may be aware, the U.S.
7 Attorney's Office has just added a number of new people.
8 They're up to 42 assistant U.S. attorneys here in Milwaukee.
9 When I left the office in June of 1987, we had 4 active
10 judges in Milwaukee and 4 senior judges, and we had 14
11 assistant U.S. attorneys.

12 As you are aware currently, we have no senior
13 judges and only three active judges here in Milwaukee. Yes,
14 we have an additional judge in Green Bay, but the workload
15 of the Green Bay division is such that they stand on their
16 own. And so Judge Stadtmueller's problem is finding the
17 time for a lot of civil cases, but I do have a period of
18 about seven to eight days, starting on March 25th of next
19 year, to devote to bringing this case to conclusion.

20 I appreciate that's not as soon as anyone,
21 including the judge, would like, but the reality is we have
22 to give priority to criminal cases, and we simply do not
23 have the resources to advance cases in the manner that they
24 ought to be. So a trial date of March 25th of next year.
25 I appreciate that a final pretrial report was earlier filed.

1 And we have made some changes in our protocols, as some of
2 you may be aware from more recent iterations of the Court's
3 trial scheduling order. I'm not going to make counsel go
4 back and reinvent the wheel as it were, but given the state
5 of affairs, I think collectively there are a number of
6 things that we can do to streamline the case to the point
7 where, when March 25th arrives, it will be adequately and
8 appropriately prepared so that we can move forward without a
9 lot of interruptions and objections and so forth.

10 And to achieve that goal, what I'm going to do is
11 as follows: We will have a final pretrial conference in the
12 case on Tuesday, March 12th of next year; however, prior
13 to March 12th, I'm going to ask counsel to confer with one
14 another, reviewing the exhibits, some of which were
15 discussed during the pendency of the referral to
16 Judge Callahan. I want both sides, or all parties, to
17 review each and every exhibit and discuss openly objections
18 to each party's exhibits. And to the extent that you're
19 unable to agree on exhibits or witnesses, I'm going to ask
20 that you submit a joint report to the Court not later than
21 Monday, February 25th. And how that report will be
22 submitted to the Court is consistent with the way we
23 currently handle exhibits and jury instructions, and that is
24 the proponent, whether it's of a witness or an exhibit,
25 submits, in paragraph form, the substance and a summary of

1 the witnesses' testimony or why the exhibit is relevant, and
2 those who may be opposed to it should submit the basis for
3 their objection and at the same time a legal analysis from
4 the proponent as well as the objector. So all of these
5 issues will be submitted in a joint report to the Court in a
6 single document that will include the competing submissions
7 of counsel for the parties, both the proponent and the
8 objector.

9 If there are objections to witnesses as opposed to
10 exhibits, if there are stipulations that can substitute for
11 live testimony, so much the better.

12 I also appreciate a lot of work has gone into the
13 jury instructions, and, of course, a lot of water has gone
14 under the bridge and over the dam, particularly in terms of
15 revised iterations of standard instructions in the last six
16 months. And to the extent that any party or counsel have a
17 view of further updating jury instructions or the verdict
18 form, that too should be included in the February 25th
19 report to the Court.

20 The final matter that I would like to have counsel
21 address, perhaps not today, but given the fact that the
22 state law claims of Mr. Perry's minor son have all been, I
23 believe, dismissed.

24 I am wondering out loud whether there is any
25 reason that he remain as a named party in the case. And so

1 that, too, is something that needs to be addressed, again,
2 perhaps not today, but certainly as a part of this
3 February 25th submission.

4 So against that backdrop, do any of you have --
5 Mr. Katers and Mr. Gende, are there any matters that you
6 would like to address?

7 MR. GENDE: Thank you, Your Honor. We appreciate
8 the Court's direction.

9 In relation to the 225 submissions that the Court
10 is requiring in paragraph format that Your Honor is asking
11 for, should it be limited to one paragraph as it --

12 THE COURT: Whatever is reasonable. I'm not
13 trying to be unreasonable. What I'm trying to do -- keeping
14 in mind, we talk to jurors after they've completed their
15 service, not on individual cases very often, but one of the
16 things that jurors find very, very disheartening, number
17 one, lawyers talk too long. And if you recall, I put some
18 limits on opening statements and closing arguments; that
19 everything the Court said back in July when we had our final
20 pretrial conference and the Court put the case over holds
21 because the jurors give us this feedback. You only need to
22 say something once. They love the new technology of having
23 exhibits up on the screen that everybody can see.

24 One of the very frustrating things with jurors and
25 lawyers, if lawyers don't strike them as being fully

1 prepared, they don't think much of the lawyers' case,
2 whether it's the plaintiff or the defense.

3 Preparation, in today's world, is literally
4 everything. And jurors, more and more of them, are not off
5 the farm, but they have college educations, they're
6 professionals, and they expect what they observe here in the
7 courtroom to be done professionally. And so I'm just giving
8 you the feedback we're getting from our citizenry on the
9 state of preparations. And that's not meant to criticize
10 anyone in this courtroom, it's just a fact of the feedback
11 we get.

12 MR. GENDE: Thank you, Your Honor.

13 THE COURT: And when it comes to paragraphs, if
14 you can do it in three sentences on relevancy. I'll give
15 one example.

16 Plaintiff suggested, back when we had our earlier
17 conference, that there was no need for the defendants to
18 call anybody from the hospital about what was done by way of
19 diagnosis and what was done in terms of a discharge. Well,
20 it may, at the end of the day, not be relevant, but if the
21 defendant officers relied on what was provided to them both
22 in writing and orally upon discharge, that counts for
23 something. So I'm not suggesting this morning that that
24 testimony is or is not relevant, but it may be.

25 And so everybody needs to put aside everything

1 that occurred in front of Judge Randa, and we're starting
2 with a clean slate here. And we're all professionals, and
3 we need not lose sight of that salient fact.

4 So that's the approach that -- and I think having
5 to think about these things, and having to put them in
6 writing causes everybody to think a little deeper and a
7 little harder about where are we going, what is truly the
8 relevance, and what fact does it intend to establish, or
9 what defense does it intend to establish?

10 And you can begin this entire analysis, as I so
11 often say, by taking a good look at the relevant jury
12 instructions. That's what's going to drive the train with
13 the good men and women seated in the jury box. And your
14 proof, whether it's for the plaintiff or the defense, ought
15 to be tailored to that. In fact, I marvel very often on why
16 and how it is the lawyers wait until after all of the
17 evidence is in even to think about, much less discuss, jury
18 instructions. It ought to be the first thing you do before
19 you engage the word "process," or whether it's drafting a
20 complaint or an answer or interrogatories or witnesses,
21 et cetera.

22 This is not rocket science, really. And so I
23 think if everybody, including the Court, focuses on the
24 issues that are going to be submitted to the jury, and you
25 draft the appropriate instructions and bring together the

1 witnesses that drive each side's position, this case,
2 seriously, shouldn't take more than a week, but I'm not
3 cutting anybody off.

4 Judge Callahan tried his *triedy might*, but the
5 lawyers were not -- I appreciate you've narrowed it somewhat
6 but not to the degree that I think we would like.

7 Keeping in mind, when we're in trial, you're in
8 the courtroom 8 hours. This is not starting at 9 concluding
9 at 4. The outline I gave you at the earlier pretrial holds.
10 We start at 8:30 in the morning. 15-minute break at 10:30.
11 Go until 12:45. 45 minutes for lunch. Go until 3:30.
12 15-minute break and go until 5:45. 8 hours. And then we
13 eliminate everybody fumbling, looking for exhibits on
14 counsel table because they put them in the wrong folder.
15 Everything is cued up electronically. It's as one would say
16 easypeasy, but you have to be prepared.

17 MR. GENDE: Thank you, Judge.

18 THE COURT: Ms. Lappen, anything you would like to
19 glean on?

20 MS. LAPPEN: No, Your Honor. Thank you.

21 THE COURT: Mr. Posnanski or Mr. Bohl?

22 MR. POSNANSKI: Nothing from either myself or
23 Mr. Bohl, Your Honor.

24 Sarah, I think, has a scheduling issue.

25 MS. ARROWOOD: Your Honor, my name is Vicki

1 Arrowood. I'm appearing today on behalf of Emile Banks.
2 And I know you have now set a trial date of March 25th. I
3 may know the answer to this. I'm trying to figure out if
4 that is set in stone because Mr. Banks has trial scheduled
5 the week of the 25th and the following week, the beginning
6 of April.

7 THE COURT: Well, as much as I would like to
8 accommodate everyone, it's impossible. We can start with
9 the proposition that, at least in this district -- I'm not
10 sure what the situation is with Mr. Banks' cases, but in
11 this district, less than 1% of the cases scheduled for
12 trial -- and I'm speaking of civil cases -- actually go to
13 trial. Less than 1%. Nationally, it's about 2 to 2 1/2% of
14 all civil cases, state and federal, actually go to trial.
15 And if we scheduled matters on the basis of conflicts, the
16 reality is we couldn't get anything done. That's the
17 reality.

18 I already have an entire eight months into next
19 year scheduled. If we were looking for a date that the
20 Court has nothing, and all of you have nothing, it would
21 probably be in early 2020.

22 I will have my clerk, Ms. Maternowski, make
23 available to you a template of our current trial scheduling
24 order. It's been updated. But the parts that I want you to
25 focus on for this report in February are found at pages 2,

1 3, and 4, and we'll make that available. But I'm trying to
2 implore you to tailor it to the exhibits and the witnesses
3 that have been a big bone of contention, and whether some of
4 it, although relevant, could not be stipulated to, and there
5 may be good reason not to.

6 I'm not trying to hammer anybody into agreeing to
7 anything. I just want to make sure that when we get into
8 trial, we are not sidetracked with trying to deal with
9 objections. I want everybody to be aware of exactly what is
10 before the jury when you deliver your opening statements.
11 That's the best way to try a case, then there are no
12 surprises to anyone, including the jurors.

13 So, again, March 25th for trial. Pretrial
14 conference Tuesday, March 12th. Monday, February 25th
15 for any updates with regard to exhibits. If the exhibits
16 are all agreed upon, you can put together a single
17 submission. That would be the best. I realize there are
18 differences of opinion with regard to the relevancy of some
19 witnesses, and we'll try as best we can to resolve each and
20 every one of these concerns prior to the trial on the
21 25th. And we may have to have some oral argument on some
22 of this during the pretrial on March 12th, but that's
23 sufficiently in advance of the trial so that everybody will
24 be prepared.

25 Thank you for being available this morning. And

1 if we can be of any assistance, please feel free to contact
2 my staff.

3 The Court stands in recess until 11:30.

4 (Hearing concluded.)
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C E R T I F I C A T E

I, Richard D. Ehrlich, a Registered Merit Reporter and Certified Realtime Reporter, certify that the foregoing is a true, complete, and accurate transcript of the proceedings ordered to be transcribed in the above-entitled case before the Honorable J.P. Stadtmueller, in Milwaukee, WI, on October 4, 2018.

s/Richard D. Ehrlich October 11, 2018

Richard D. Ehrlich, Official Court Reporter